APPENDIX A.

VERDICT OF CITY COURT OF HAMMOND, MAY 5, 1965.

City of Hammond vs. No. 6771 Glenn Conner, Continued.

Minutes of Wednesday, May 5, 1965:

Pursuant to previous recess, trial was again resumed in this case. Present: His Honor Allen B. Pierson, Judge Presiding; Hon. John D. Kopfler and Hon. Gordon E. Causey, Attorneys for Plaintiff, City of Hammond; Hon. William M. Lucas, Jr., Attorney for Defendant, Glenn Conner; Mr. Glenn Conner, Defendant; Chief of Police H. Brooks Robinson, Dy. Marshal of Court; and Mrs. Lorraine M. David and Mrs. Nellwin Fagan Null, Dy. Clerks of Court.

Mr. Causey opened by stating that the City of Hammond offered no rebuttal and then proceeded to close the City's case, presenting his closing arguments to the Court, with Mr. Lucas answering for the defense.

After the City closed its case, the Court rendered a verdict of Guilty as Charged. Mr. Lucas then filed a Motion for a New Trial, which was over-ruled by the Court.

The defense then waived the delay for sentencing, and the defendant, Glenn Conner, being ready for sentence was asked if he had anything to say why the sentence of the law should not be imposed upon

him and he having replied the Court sentenced him to a fine of $100.00 and Cost or 30 days in jail.

Mr. Lucas then presented to the Court, both orally and written, a Motion for Appeal. Mr. Kopfler and Mr. Causey, Attorneys for City of Hammond, were both given copies of same.

Then, by the Court: LET AN ORDER OF APPEAL enter herein, returnable to the Twenty-First Judicial District Court, for the Tangipahoa Parish, Amite, Louisiana, on or before June 7, 1965, upon the Defendant furnishing Bond in the amount of FIVE HUNDRED AND NO/100 ($500.00) DOLLARS same to be in the form of an Appearance Bond.

The Court then ordered the Clerk of Court not to wait for the transcript of this trial, before sending the case to Amite.

Court was then ordered adjourned until Monday, May 10, 1965.

APPENDIX B.

MINUTE ENTRY OF JUDGMENT OF THE TWENTY-FIRST JUDICIAL DISTRICT COURT FOR THE PARISH OF TANGIPAHOA OF DECEMBER 1, 1966, AFFIRMING JUDGMENT OF THE CITY COURT OF HAMMOND.

December 1, 1966.

This day Court convened at 9:30 A.M. pursuant to previous order of adjournment. Present His Honor, Ben N. Tucker, Judge Presiding, Duncan S. Kemp, District Attorney, Estelle S. Stire, Clerk of Court and Thomas I. Sanders, Sheriff.

Appeal from City Court of Hammond

City of Hammond
vs. no. 11,997
Glen Conner

This day the defendant was personally present in open Court accompanied by his attorney, Mr. William Lucas. City of Hammond not represented by counsel. This matter having previously been tried, came up on this day for verdict to be rendered by the Court. Oral reasons for judgment were read in open Court and the verdict of the lower Court was affirmed. Whereupon, counsel for defendant filed a Motion for a Rehearing in the case and the Court overruled the Motion with the attorney or Assistant Attorney for the City of Hammond not being present at the time of the

rendition of such ruling. Counsel for the defendant did not object to the ruling of this motion being rendered in the absence of the counsel for the City of Hammond. Counsel for defendant filed a Notice of Intention to Apply for Writs of Certiorari, Review, Mandamus and Prohibition and Court stay imposition of sentence until February 1, 1967.

APPENDIX C.

REASONS FOR JUDGMENT OF THE TWENTY-FIRST JUDICIAL DISTRICT COURT FOR THE PARISH OF TANGIPAHOA.

21ST JUDICIAL DISTRICT COURT
PARISH OF TANGIPAHO
STATE OF LOUISIANA

Filed Dec. 2, 1966
/s/ Frances A. Piazza
Dy. Clerk of Court

CITY OF HAMMOND
VS. NO. 11997
GLEN CONNER

ON APPEAL FROM THE CITY COURT OF HAMMOND, SEVENTH WARD, PARISH OF TANGIPAHOA, STATE OF LOUISIANA, HONORABLE ALLEN B. PIERSON, JUDGE PRESIDING

REASONS FOR JUDGMENT.

This case reaches us on appeal from the verdict of the City Court of Hammond convicting the defendant of a violation of Ordinance No. 499 C.S. regularly adopted by the City of Hammond, and the consequent imposition by the Trial Court of a $100.00 fine and cost of court or thirty days in jail sentence.

The defendant reasserts and realleges here all of the preliminary motions which he filed in the Trial

Court, consisting mainly of the original and supplemental motions (1) to quash the affidavit on which the prosecution was premised, (2) bills of particulars, and (3) for a trial by jury.

The Ordinance in question deals with the intentional production, sale, exhibition, gift or advertisement with the intent to primarily appeal to the prurient interest of the average person, of any lewd, lascivious, filthy or sexually indecent written composition * * * book, magazine * * * and so forth.

In his motion to quash defendant strongly contends that the affidavit is wholly defective in that same is duplicitous because he is charged disjunctively or alternatively with selling *or* exhibiting the questioned materials, and under the provisions of Article 222 of the Louisiana Code of Criminal Procedure, since the two alleged infractions (selling or exhibiting) constitute two separate and distinct offenses, the charges must be recited in a conjunctive rather than a disjunctive manner, and in support thereof he cites the case of City of Shreveport v. Bryson, 33 So 2d 60 in which the defendant was charged with the crime of operating a motor vehicle while under the influence of intoxicating liquor or drugs as authority for the proposition that the affidavit in the instant case must fall because the gravamen in the Bryson case is not followed in the subject affidavit, is, therefore, not apprised of the exact nature of the offense with which he is charged. We do not believe that the problems with which the Court was confronted in the Bryson

case are analogous to the present situation. While defendant's point is well taken to the effect that subsequent pleadings such as the City's answers to the motions for bill of particulars cannot create a defect nor remedy one in an affidavit or bill of information the terminology, selling or exhibiting, is not so dissimilar in context as to pose uncertainty in the mind of an accused with respect to the precise accusation with which he is charged. There was no such similarity in the meaning of the disjunctive language used in the affidavit before the Court in the Bryson case.

Defendant further urges as a ground for his motion to quash that the Ordinance and the Statute of the State of Louisiana, R.S. 14:106 which it tracks and follows are invalid and unconstitutional for the reason that it is an unwarranted and illegal impingement on the right of free speech and press protected by the 1st, 10th and 14th Amendments to the Federal Constitution and the correlative constitutional provisions of this State, and that the Ordinance and Statute do not follow the guidelines for determining obscenity as enunciated by the United States Supreme Court in the case of Roth v. United States 77 S. Ct. Rptr. 1304 and other Federal decision of like import. Defendant contends that the test prescribed by the Federal Jurisprudence, as particularly epitomized by the Roth case appealing to the prurient interest—deals with the statutory description of obscene materials, while the Louisiana Statute uses this test only in defining defendant's intent, and several cases are cited, the holdi

ings of which are claimed to illustrate the unsoundness of this statutory approach. It is argued that as the Ordinance and Statute are presently confected conceivably a distributor of magazines or books, not by accepted standards obscene in nature, could, if his intention was to incite the prurient interest of his purchasers, be adjudged guilty of violating the law, when the material exhibited or sold, was not legally obscene. Of course, such a result would be intolerable, and in derogation of the rights protected by the Constitutional provisions against impingement on freedom of speech. It would seem, however, that the wording of the Statute does not ignore the Roth test with respect to the necessity of considering the dominant theme of the material, since such words as lewd, lascivious, and filthy are used in describing objectionable material legislated against. Moreover, in view of the holding by our Supreme Court in the case of State v. Roufa, 129 So. 2d that R.S. 14:106 (2) is constitutional and valid, we are bound by and constrained to follow this decision. True, the attack on the Statute in the Roufa case was directed at its validity under the freedom of speech and due process amendments to the Federal and State Constitutions, whereas, defendant here also levels his thrust on the additional ground that invalidity attaches to the Statute and Ordinance for failure to utilize the wording necessary to come within the four corners of the rationale expounded in the Roth case for the determination of what actually constitutes obscenity. It is well to mention that the Supreme Court of Louisiana in the Roufa case made mention of the Roth case without noting

any lack or failure in the Statute occasioned by the reasoning in Roth.

On the merits objections were interposed to the witnesses using the word "obscene" in describing the contents of the questioned magazines for the reason that this determination lay within the province of the Court. These objections were allowed to go to the effect of such testimony. The Court is perfectly aware that the responsibility for deciding whether the magazines in evidence are obscene, with the dissemination of such putting the defendant in violation of the Ordinance, rests with the Court. Without going into detail we hold the opinion that the contents of the great majority of the magazines which defendant was charged with distributing come within the legal definition of obscenity, and the dominant theme in the materials contained in most of the magazines at issue taken as a whole would appeal to the prurient interest of the average person, applying contemporary community standards. With one or two exceptions the magazines are totally devoid of redeeming features and do not elicit any social importance.

The verdict of the Lower Court will be affirmed.

AFFIRMED.

APPENDIX D.

ORDER OF THE TWENTY-FIRST JUDICIAL DISTRICT COURT FOR THE PARISH OF TANGIPAHOA OF DATE JANUARY 27, 1967, AMENDING JUDGMENT OF DECEMBER 1, 1966.

ORDER

Considering the foregoing motion, it is ordered that the judgment herein rendered on December 1, 1966 be amended only to the following extent:

The Court finds that the October 1964 issue of Playboy Magazine introduced in evidence is not obscene.

(S.) BEN N. TUCKER,

(Ben N. Tucker),
Judge, Div. B. 21st Judicial District Ct.

Amite, Louisiana
January 27, 1967

APPENDIX E.

ORDER OF THE TWENTY-FIRST JUDICIAL DISTRICT COURT FOR THE PARISH OF TANGIPAHOA OF DATE MARCH 8, 1967, FURTHER AMENDING JUDGMENT OF DECEMBER 1, 1966.

ORDER

Considering the foregoing motion, it is ordered that the judgment herein rendered on December 1, 1966 be further amended only to the following extent:

The Court finds that Nudism Today "Official Calendar" and Urban Nudist "Issue 14", introduced into evidence as exhibits C-11 and C-12 are not obscene.

Amite, Louisiana this 8th day of March, 1967.

(S) BEN N. TUCKER,
(Ben N. Tucker),
Judge, 21st Judicial District Court.

APPENDIX F.

SUPREME COURT OF LOUISIANA—REFUSAL OF WRITS OF CERTIORARI AND REVIEW, MARCH 27, 1967.

Supreme Court of Louisiana
NEW ORLEANS, 70112

March 27, 1967

No. 48,635

City of Hammond
v.
Glen Conner

In re: Glen Conner applying for writs of certiorari and review

WRITS REFUSED. Since the violation of a city ordinance is not a crime, a prosecution for such violation is not governed by the procedural rules applicable to prosecutions for offenses against the State. See City of New Orleans vs. Adjmi, 249 La. 346, La., 186 So. (2d) 616 (1966) overruling City of Shreveport vs. Bryson, 212 La. 534, La., 33 So. (2d) 60 (1947); also City of New Orleans vs. Cook, ... La. ...., La., 191 So. (2d) 634 (1966). Further, we find no error of law with respect to the other complaints made by relator.

(S) EHMcG
(S) JBF
(S) JBH
(S) FWH
(S) WBH
(S) JWS
(S) FWS

APPENDIX G.

OBSCENITY ORDINANCE OF THE CITY OF HAMMOND

ORDINANCE No. 439 C. S.

AN ORDINANCE DECLARING OBSCENITY TO BE A MISDEMEANOR; SETTING FORTH THE VARIOUS OFFENSES THAT AMOUNT TO OBSCENITY: AND PRESCRIBING THE PENALTIES FOR THE VIOLATION HEREOF.

BE IT ORDAINED BY THE COMMISSION COUNCIL OF THE CITY OF HAMMOND, LOUISIANA:

SECTION 1: Obscenity is the intentional:

(A) Exposure of one's person in a public place in such manner that any part of a sex organ may be seen by another person, with the intent of arousing sexual desire.

(B) Production, sale, exhibition, gift, or advertisement with the intent to primarily appeal to the prurient interest of the average person, of any lewd, lascivious, filthy or sexually indecent written composition, printed composition, book, magazine, pamphlet, newspaper, story paper, writing, phonograph record, picture, drawing, motion picture film, figure, image, wire or tape recording or any written, printed or recorded matter of sexually indecent character which may or may not require mechanical or other

means to be transmitted into auditory, visual or sensory representations of such sexually indecent character.

(C) Possession with the intent to sell, exhibit, give or advertise any of the pornographic material of the character as described in Paragraph 2 above, with the intent to primarily appeal to the prurient interest of the average person.

(D) Performance by any person or persons in the presence of another person or persons with the intent of arousing sexual desire, of any lewd, lascivious, sexually indecent dancing, lewd, lascivious or sexually indecent posing, lewd, lascivious or sexually indecent body movement.

(E) Solicitation or attempt to entice any unmarried person under the age of seventeen years to commit any act prohibited by this section.

(F) Requirement by a person, as a condition to a sale, allocation, consignment or delivery for resale of any paper, magazine book, periodical or publication to a purchaser or consignee, that such purchaser or consignee receive for resale any other article, book or publication reasonably believed by such purchaser or consignee to contain articles or material of any kind or description which are designed, intended or reasonably calculated to or which do in fact appeal to the prurient interests of the average person in the community, as judged by contemporary community

standards, or the denying or threatening to deny any franchise or to impose any penalty, financial or otherwise, by reason of the failure of any person to accept such articles or things or by reason of the return thereof.

(G) Display of nude pictures of a man, woman, boy or girl in any public place, except as works of art exhibited in art galleries.

SECTION 2: In prosecutions for obscenity, lack of knowledge of age or marital status shall not constitute a defense.

SECTION 3: Whoever commits the crime of obscenity shall be fined not more than One Hundred Dollars ($100.00), or imprisoned for not more than ninety days, or both.

SECTION 4: Be it further ordained that all ordinances or parts of ordinances in whatsoever manner they may conflict with this ordinance are hereby repealed and made null and void.

SECTION 5: Since this ordinance directly affects the public health, safety and welfare, this ordinance shall become effective immediately upon adoption.

ADOPTED BY THE COMMISSION COUNCIL OF THE CITY OF HAMMOND, LOUISIANA, THIS 2ND DAY OF JUNE, 1964

(S) JOHN C. MORRISON
Mayor

(S) JANE ALLEN
Secretary

Published June 11, 1964.

APPENDIX H.

LOUISIANA CONSTITUTION OF 1921 AS AMENDED, ARTICLE 7, § 36.

§ 36. Appellate jurisdiction; trials de novo

Section 30. The district courts have appellate jurisdiction, except as otherwise provided in this Constitution, of the following cases: All appeals in civil cases tried by justices of the peace within their respective districts; all appeals in civil cases tried in city or municipal courts within their respective districts where the amount in dispute, or the value of the movable property involved does not exceed one hundred dollars, exclusive of interest; all appeals from orders of justices of the peace requiring a peace bond; and all appeals from sentences imposing a fine or imprisonment by a mayor's court or by a city or municipal court. These appeals shall be tried de novo and without juries; but no evidence shall be admitted on the trial de novo which was not offered in the lower court unless it is shown to the satisfaction of the court that, despite the exercise of reasonable diligence by the party offering it, such evidence could not have been produced at the trial in the court below. (As amended Acts 1956, No. 607, adopted Nov. 6, 1956; Acts 1958, No. 501, adopted Nov. 4, 1958).

APPENDIX I.

LOUISIANA CONSTITUTION OF 1921, AS AMENDED, ARTICLE 7, § 10.

§ 10. Supervisory, original and appellate jurisdiction

Section 10. The Supreme Court has control of, and general supervisory jurisdiction over all inferior courts.

It has exclusive original jurisdiction of disbarment cases involving misconduct of members of the bar, with the power to suspend or disbar under such rules as the court may adopt; of suits for the removal from office of judges of courts of record as elsewhere provided in this Constitution; and of the determination of questions of fact affecting its own appellate jurisdiction in any case pending before it, and to that end, it may make such orders and decrees as it may deem proper.

In civil cases, its appellate jurisdiction extends to both the law and the facts. In criminal matters, its appellate jurisdiction extends to questions of law only.

The following cases only shall be appealable to the Supreme Court:

(1) Cases in which the constitutionality or legality of any tax, local improvement assessment, toll or impost levied by the state or by any parish, municipality, board or subdivision of the state is contested;

(2) Cases in which an ordinance of a parish, municipal corporation, board or subdivision of the state, or a law of this state has been declared unconstitutional;

(3) Cases in which orders of the Public Service Commission are in contest, as is provided in Article VI, Section 5 of this Constitution;

(4) Appealable cases involving election contest, but only if the election district from which the suit or contest arises does not lie wholly within a court of appeal circuit; and

(5) Criminal cases in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed.

If a case is appealed properly to the Supreme Court on any issue, the Supreme Court has appellate jurisdiction over all other issues involved in the case. (As amended Acts 1958, No. 561, adopted Nov. 4, 1958).

APPENDIX J.

CROSS REFERENCES TO TRANSCRIPT CITATIONS, LOUISIANA SUPREME COURT, DISTRICT COURT, CITY COURT.

As indicated at page 3 of this Petition for Certiorari, all transcript references quoted in the Petition, except as otherwise indicated, are references to the duplicate certified copy of the Record in *City of Hammond vs. Glen Conner,* No. 48,635 Supreme Court of Louisiana, since the copy of the transcript of the Twenty-first Judicial District Court for the Parish of Tangipahoa and index thereto were not completed at the time of the preparation of Petition for Certiorari. This Appendix has been added subsequent to completion of the transcript in the District Court which includes transcript in the City Court, and accordingly, cross references are here made for the convenience of this Honorable Court to all transcript references appearing in the foregoing Petition for Certiorari.

DOCUMENT	TRANSCRIPT REFERENCES		
	Louisiana Supreme Court	Twenty-first Judicial District Court for the Parish of Tangipahoa	City Court of Hammond
Affidavit	44	—	2
Amended Affidavit	67	—	10
Motion to Quash	48	15-A	4
Supplemental Motion to Quash the Amended Affidavit	69	15-D	12

	Louisiana Supreme Court	Twenty-first Judicial District Court for the Parish of Tangipahoa	City Court of Hammond
Minutes of City Court of Hammond reflecting the overruling of Motion to Quash and Supplemental Motion to Quash	115	—	1-B
Application for Supervisory and Remedial Writs of Certiorari, Prohibition, Mandamus and Review to the City Court for the City of Hammond	103	—	45
Denial of Application for Remedial Writs RE: Trial by Jury	107	—	42
Motion for Filing of Pleadings on behalf of Defendant refiling in the District Court all of the Motions filed in the City Court	123	15	—
Petition for Rehearing	143	31	—
Minutes of the District Court reflecting refusal of Rehearing	143	4	—
Notice of Intention to Apply to the Louisiana Supreme Court for Writs of Certiorari and Review	152	60	—

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

CONNER *v.* CITY OF HAMMOND.

ON PETITION FOR WRIT OF CERTIORARI TO THE TWENTY-FIRST JUDICIAL DISTRICT COURT, LOUISIANA, PARISH OF TANGIPAHOA.

No. 259. Decided October 23, 1967.

PER CURIAM.

The petition for a writ of certiorari is granted and the judgment of the Twenty-first Judicial District Court for the Parish of Tangipahoa, Louisiana, is reversed. *Redrup* v. *New York*, 386 U. S. 767.

MR. JUSTICE HARLAN would affirm the judgment of the state court upon the premises stated in his separate opinion in *Roth* v. *United States*, 354 U. S. 476, 496, and in his dissenting opinion in *Memoirs* v. *Massachusetts*, 383 U. S. 413, 455.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.